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**Biases in Domestic Violence Criminal Decision Making:
Are System Actors Lenient in Domestic Violence Cases?**

Silvana Andrea del Valle Bustos*

ABSTRACT: This essay makes a review of studies about the presence of biases against victims in the Judicial Decisionmaking of Domestic Violence (DV) crimes. The global recognition of the phenomenon has promoted a legal reform movement, in which the United States has been part. The first reform in the topic in the US was the Violence Against Women Act (VAWA) of 1991. This federal statute detected biases not only in the judges, but also in other criminal prosecution actors –police departments and prosecutors. Then, it introduced research funds and legal tools to fight against biases, under the premise that DV is a gender based crime. Because of these facts, the author proposes that the effects of the Act must be evaluated by a double checking. In first, it is needed to see the changes on all of the criminal prosecution actors’ attitudes and action toward DV violent crimes. In second, the analyzed studies show how the rates of the different stages of DV prosecution –arrest, prosecution decisions, and sentencing– have changed over the time. As a third and additional checking of the biases phenomenon, the author takes a foreign jurisdiction – Chile, a developing country– to compare how a legal reform with a lower biases target works. The essay concludes with the confirmation of a reduction of biases in DV criminal prosecution in the United States, including some warnings about how authorities analyze too optimistically the rates, and with comments of the opportunity that Chile has to assess and solve the problem in a better manner.

KEY WORDS: Domestic Violence, Leniency in Domestic Violence, Arrest in Domestic Violence, Mandatory Arrest Policies, Double Arrest, Domestic Violence Prosecution, Evidence Based Prosecution, No-Drop Policies, Judicial Decision Making, Judicial Decisionmaking, Decisionmaking in Domestic Violence, Decision Making in Domestic Violence.

Introduction

In 1991, The Senate Report for the Violence Against Woman Act (VAWA) accounted that women who experienced crimes should not only confront the natural effects of crime, but also barriers in law, enforcement of the law, and even “stronger barriers of attitude” in the criminal system.”¹ The Report even asserted that the system “[d]espite decades of law reform [has a]

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¹ S. REP. 102-197, S. Rep. No. 197, 102ND Cong., 1ST Sess. 1991, SEC 522, p. 41 [not sure about how to cite]

prevalence of [...] prejudices on a daily basis.”² Before and after this declaration, anti Domestic Violence (DV) advocates have insisted that the criminal system does not treat these gender motivated crimes “as seriously as other violent crimes.”³ Thus, the introduction of legislation that mandates a more severe treatment of DV crimes is not only caused by the desire of a bigger prevention or retribution effects, but also by the verification of a difference between the system treatment of non-DV and DV violent crimes.

In this essay I will analyze some pieces of literature that address this alleged different treatment. To do so, I will divide the paper into three parts. In part one, I assert that the different or equal treatment of DV and non DV crimes is a question we should assess beyond judicial decisionmaking. In fact, the legal reform was directed to improve the response of all the actors in the criminal system. In part two, I will analyze this response in different key points of the DV crimes decisionmaking. This analysis will be done under the assumption that sentencing in DV crimes depends greatly not only on what judges do, but on all of the criminal system actors’ behavior before the sentence⁴. In part three, I will look for confirmation of the different treatment phenomenon in a foreign jurisdiction, trying to compare what the US has accomplished in the issue with what a developing country like Chile –where I am from– is trying to do.

In the mentioned three part analysis, I will try to answer two questions. First, is there still a lack of “seriousness” or “severity” in the system treatment of DV offenses? Second, what are the possible causes of such a different treatment?

I. The decisionmaking in the subject involves several actors.

In the decade before the VAWA of 1994, several studies confirmed a difference in treatment of crimes targeted against women and those which affected men⁵, showing an “invisible problem.”⁶

² *Id.*

³ See *id.* SEC 301, p. 34: “TITLE III–CIVIL RIGHTS. SEC. 301. CIVIL RIGHTS. (a) Findings.–The Congress finds that– [...] (8) victims of gender-motivated violence have a right to equal protection of the laws, including a system of justice that is unaffected by bias or discrimination and that, at every relevant stage, treats such crimes as seriously as other violent crimes.”

⁴ For instance, Andrew D. Klein says that according to national victims’ surveys, policy arrest rates and courts cases measures “[j]udges typically see only a small minority of domestic violence cases that actually occur”. ANDREW R. KLEIN, PRACTICAL IMPLICATIONS OF CURRENT DOMESTIC VIOLENCE RESEARCH: FOR LAW ENFORCEMENT, PROSECUTORS, AND JUDGES, U.S. Department of Justice, Office of Justice Programs, Washington, DC, 2009, p. 6. Available at <http://www.ojp.usdoj.gov/nij/topics/crime/intimate-partner-violence/practical-implications-research/welcome.htm>

⁵ For instance, See S. REP. 102-197, S. Rep. No. 197, 102ND Cong., 1ST Sess. 1991, SEC 522, p. 49, citing the following reports: Administrative Office of the California Courts, Judicial Council, “Achieving Equal Justice for Women and Men in the Courts” 65 (1990) (established by Chief Justice of California Supreme Court); Colorado Supreme Court Task Force, on Gender Bias in the Courts, Gender & Justice in the Colorado Courts (1990); Connecticut Task Force, Gender, Justice and the Courts (1991) (established by Chief Justice of Connecticut Supreme Court (1991); Florida Supreme Court Gender Bias Study Commission, “Report” (1990); Supreme Court of Georgia, “Gender and Justice in the Courts” (1991); Illinois Task Force, Gender Bias in the Courts (1990) (established by three bar associations at the direction of the Chief Justice of the Illinois Supreme Court); Maryland Special Joint Committee, “Gender Bias in the Courts” (1989) (established by Chief Justice of Maryland Supreme Court); Massachusetts Supreme Judicial Court, Gender Bias Study of the Court System in Massachusetts (1989); Michigan Supreme Court Task Force on Gender Issues in the Courts, “Final Report” (1989); Minnesota Supreme Court Task Force for Gender Fairness in the Courts, “Final Report,” reprinted in 15 Wm. Mitchell L. Rev. No. 4

In fact, due to the effort of organizations such as the National Judicial Education Program to Promote Equality for Women and Men in the Courts (NJEP), and the National Association of Women Judges, in the 1980s the judiciary began to recognize the existence of “inexpertise [about the problem of different treatment between DV and no-DV crimes, and] *systematic biases*” in the entire system⁷. Thus, it is not surprising that legislators acknowledged that all of the prosecution system actors –police officers, prosecutors, defenders, court employees, and judges– needed a change in attitude toward gender based crimes, including DV, from the report to the sentencing stages⁸.

As a result of this awareness, the VAWA 1994 not only created a new and federal frame for gender based crimes,⁹ but also it provided sources to increase the “seriousness” with which the system actors should confront a gender based crime. This Act implemented grants for education and training of these system actors, as well as grants for investigation and encouragement of more *aggressive* or *serious* report¹⁰, arrest (including decrease of the “dual arrest”)¹¹, prosecution¹² and sentencing¹³ in DV crimes. Its purpose was also the centralization

(1989); Nevada Supreme Court Gender Bias Task Force, “Justice for Women”; New Jersey Supreme Court Task Force, “Women in the Courts” (1984); New York Task Force on Women in the Courts, “Report,” reprinted in 15 Fordham Urban Law Journal No. 1 (1986); Rhode Island Supreme Court Committee on Women in the Courts (1987); Utah Task Force on Gender and Justice, “Report to the Utah Judicial Council” (1990); Vermont Supreme Court and Vermont Bar Association, “Gender and Justice: Report of the Vermont Task Force on Gender Bias in the Legal System” (1991); Washington State Task Force, “Gender and Justice in the Courts” (1989) (established by Chief Justice of Washington Supreme Court); Wisconsin Equal Justice Task Force, “Final Report” (1991) (established by Chief Justice of Wisconsin Supreme Court).

⁶ LYNN HECHT SCHAFFRAN AND NORMA J. WIKLER, STATE JUSTICE INSTITUTE, GENDER FAIRNESS IN THE COURTS: ACTION IN THE NEW MILLENNIUM, IX (2001), available at <http://www.legalmomentum.org/our-work/njep/njep-task-forces.html>

⁷ Norma J. Wikler, *Water on Stone: a Perspective on the Movement to Eliminate Gender Bias in the Courts*, in COURT REVIEW, AMERICAN JUDGES ASSOCIATION, Fall 1989, 228-234, 229. *Emphasis added*.

⁸ S. REP. 102-197, S. Rep. No. 197, 102ND Cong., 1ST Sess. 1991, SEC 522, p. 50: “Practices deter victims from reporting and prosecuting crimes of violence.”

⁹ These crimes were recognized as civil rights violations like any other discriminatory based crime. *See Id.* SEC 301. Even though in 2000 the Supreme Court declared unconstitutional the civil right claim remedy in *United States v. Morrison* 529 U.S. 598, the focused crimes of VAWA reflect a gender based motivation, being still their decrease a key goal of this piece of legislation.

¹⁰ *Id.* SEC 315 (a) (2) MODEL STATE LEADERSHIP GRANTS FOR DOMESTIC VIOLENCE INTERVENTION: “(a) The Secretary, in cooperation with the Attorney General, shall award grants to not less than 10 States to assist in becoming model demonstration States and in meeting the costs of improving State leadership concerning activities that will–

“(2) *encourage the reporting* of incidences of domestic violence.” *Emphasis added*.

¹¹ *Id.* SEC 312 (b) (1): “(b) Eligibility.–(1) Eligible grantees are those States, Indian tribes, municipalities or other local government entities that–

“(A) demonstrate, through arrest and conviction statistics, that their laws or policies have been effective in *significantly increasing the number of arrests* made of spouse abusers; and

“(B) certify that their laws or official policies–

“(i) *mandate arrest* of spouse abusers based on probable cause that violence has been committed or mandate arrest of spouses violating the terms of a valid and outstanding protection order; or

“(ii) *permit warrantless misdemeanor arrests* of spouse abusers and encourage the use of that authority;

“(C) demonstrate that their laws, policies, practices and training programs *discourage ‘dual’ arrests* of abused and abuser and the increase in arrest rates demonstrated pursuant to paragraph (1)(A) is not the result of increased dual arrests; and

“(D) certify that their laws, policies, and practices *prohibit issuance of mutual protection orders* in cases where only one spouse has sought a protective order, and require findings of mutual aggression to issue mutual protective orders in cases where both parties file a claim.” *Emphasis added*.

and coordination of all the actors' work against violence¹⁴. These goals of the Act were confirmed by its reauthorizations and amendments (VAWA 2000, and VAWA 2005)¹⁵.

The VAWA was passed and definitely made an impact.

A. The Police.

See also SEC 315 (b) (1) (2) MODEL STATE LEADERSHIP GRANTS FOR DOMESTIC VIOLENCE INTERVENTION: "(b) To be designated as a model State under subsection (a), a State shall have in effect– (1) a law that requires *mandatory arrest* of a person that police have probable cause to believe has committed an act of domestic violence or probable cause to believe has violated an outstanding civil protection order; (2) a law or policy that *discourages dual arrests*." *Emphasis added*.

¹² *Id.* SEC 315 (a) (1) (3) MODEL STATE LEADERSHIP GRANTS FOR DOMESTIC VIOLENCE INTERVENTION: "(a) The Secretary, in cooperation with the Attorney General, shall award grants to not less than 10 States to assist in becoming model demonstration States and in meeting the costs of improving State leadership concerning activities that will–

"(1) increase the number of prosecutions for domestic violence crimes;

"(3) facilitate "arrests and aggressive" prosecution policies; [...]

Also, SEC 315 (b) (3): "(b) To be designated as a model State under subsection (a), a State shall have in effect–

"(3) statewide prosecution policies that–

"(A) authorize and encourage prosecutors to pursue cases where a criminal case can be proved, including proceeding *without the active involvement of the victim if necessary*; and

(B) implement model projects that include either–

(i) a "*no-drop*" prosecution policy; or

(ii) a *vertical prosecution policy*; and

(C) *limit diversion* to extraordinary cases, and then only after an admission before a judicial officer has been entered." *Emphasis added*.

¹³ *Id.* SEC. 312 (a) (3) ENCOURAGING ARREST POLICIES: "(a) Purpose.–To encourage States, Indian tribes and localities to treat spousal violence as a serious violation of criminal law, the Secretary is authorized to make grants to eligible states, Indian tribes, municipalities, or local government entities for the following purposes:

"(3) to educate judges in criminal and other courts about spousal abuse and to improve judicial handling of such cases."

Also, SEC 315 (b) (4) (C) (5) MODEL STATE LEADERSHIP GRANTS FOR DOMESTIC VIOLENCE INTERVENTION: "(b) To be designated as a model State under subsection (a), a State shall have in effect–

"(4) statewide laws, policies, or guidelines for judges that–

"(C) encourage the understanding of domestic violence as a serious criminal offense and not a trivial dispute;

"(5) develop and disseminate methods to improve the criminal justice system's response to domestic violence to make existing remedies as easily available as possible to victims of domestic violence, including reducing delay, eliminating court fees, and providing easily understandable court forms."

¹⁴ *Id.* SEC. 312 (a) (2) ENCOURAGING ARREST POLICIES: "(a) Purpose.–To encourage States, Indian tribes and localities to treat spousal violence as a serious violation of criminal law, the Secretary is authorized to make grants to eligible States, Indian tribes, municipalities, or local government entities for the following purposes:

"(2) to *centralize and coordinate police enforcement, prosecution, or judicial responsibility* for, spousal abuse cases in one group or unit of police officers, prosecutors, or judges." *Emphasis added*.

¹⁵ See, for instance, VAWA 2005, Pub. L. No. 109-162: VIOLENCE AGAINST WOMEN AND DEPARTMENT OF JUSTICE REAUTHORIZATION ACT OF 2005, TITLE I—ENHANCING JUDICIAL AND LAW ENFORCEMENT TOOLS TO COMBAT VIOLENCE AGAINST WOMEN, SEC. 101: STOP GRANTS IMPROVEMENTS, SEC. 111: GRANTS FOR LAW ENFORCEMENT TRAINING PROGRAMS. See also, TITLE XI—DEPARTMENT OF JUSTICE REAUTHORIZATION, SUBTITLE B—IMPROVING THE DEPARTMENT OF JUSTICE'S GRANT PROGRAMS, CHAPTER 1—ASSISTING LAW ENFORCEMENT AND CRIMINAL JUSTICE AGENCIES, SEC. 1115: INTEGRITY AND ENHANCEMENT OF NATIONAL CRIMINAL RECORD DATABASES.

Firstly, the police departments are answering in a different manner to DV calls: increasing their arrest rates. This is a legal reform achievement. However, this change has not been really attitudinal. The proof of this is an undesired side effect of the mandated more rigorousness in the police treatment: the “dual arrest,”¹⁶ defined as the police officers’ tendency to arrest “both parties at the scene,” the reported aggressor and the person who is reporting being a victim of DV¹⁷, and to classify the incident as a fight rather than an act of aggression with a “primary aggressor.”¹⁸

According to Hirschel *et al.*, a better police’s response can be achieved when the police’s “statutory frameworks (e.g. mandatory, preferred, or discretionary arrest)” promote *accountability* for police’s failure¹⁹. In fact, there are not real effects or differences in arrest practices when departments have a statutory or departmental mandatory arrest policy, or discretionary policies.²⁰ But, when departments have “preferred arrest policy according to state law”, they tend to have “higher arrest rates than departments that [define] themselves as preferred arrest departments in their department policies.”²¹

B. The Prosecutors.

Secondly, prosecutors have introduced policy changes that have shaped the way in which the police and the judiciary respond to DV violent crimes. Even though there are differences between jurisdictions, “routine prosecution of domestic violence arrests is no longer exceptional or rare.”²² Moreover, dismissing or *nolle prosequere* did become rare and exceptional²³. One of the reasons for this change is the STOP Violence Against Women Formula Grant Program, created by the VAWA, which incentives directly a change in prosecution policies.²⁴ After its introduction, prosecutors have adopted a more “[r]igorous criminal prosecution,” which can be defined as an effort for “early and repeated contacts with victims, providing them access to

¹⁶ DAVID HIRSCHSEL, EVE BUZAWA, APRIL PATTAVINA, DON FAGGIANI, AND MELISSA REULAN, EXPLAINING THE PREVALENCE, CONTEXT, AND CONSEQUENCES OF DUAL ARREST IN INTIMATE PARTNER CASES, Final report for National Institute of Justice, grant number 2001-WT-BX-0501, Washington, DC, U.S. Department of Justice, National Institute of Justice, April 2007, NCJ 218355, xiii available at <http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=240055>.

¹⁷ ROCHELLE BRAAF, ARRESTING POLICIES: IMPLICATIONS OF PRO AND MANDATORY ARREST POLICIES FOR VICTIMS OF DOMESTIC AND FAMILY VIOLENCE, Australian Domestic & Family Violence Clearinghouse 1 (2008), available at http://www.austdvclearinghouse.unsw.edu.au/Word%20Files/Dual%20arrest_ADFV%20Clearinghouse%20BraafR_July%202008.doc.

¹⁸ *Id.* at 2. Notice that since the “dual arrest” has been detected as a bad practice, the VAWA 1994 was concerned with and provided funds for discouraging it.

¹⁹ HIRSCHSEL, *supra* note 16, at vii-viii.

²⁰ *Id.* at vii.

²¹ *Id.*

²² KLEIN, *supra* note 4, at 36.

²³ *Id.*

²⁴ U.S. DEPARTMENT OF JUSTICE OFFICE ON VIOLENCE AGAINST WOMEN (OVAW), STOP PROGRAM: SERVICES Y TRAINING Y OFFICERS Y PROSECUTORS 2005 ANNUAL REPORT 51, available at http://www.ovw.usdoj.gov/docs/ovw-2005_STOP_Report_final_sec508.pdf: “[A]ppropriate evidence will be collected to enable prosecutors to bring successful cases. Law enforcement’s approach to violence against women must be proactive and *rigorous*.” *Emphasis added*.

supportive, protection, legal, and other resources, inform and reassure victim regularly throughout the course of a prosecution, [toward] an increase [of] the likelihood of conviction and reduc[tion of the] recidivism.”²⁵ However, some authors do not believe that rigorousness plainly means an increase in rates of charges. For example, Garner thinks that prosecution does not necessarily means charging, since revictimization and recidivism concerns are also present in the studies about prosecution in DV.²⁶

C. The judges.

Finally, the judiciary’s reaction toward DV crimes also has changed. Even though some authors believe judges did not really treat DV crimes with a deep bias in the past,²⁷ others recognize that any especial judiciary’s worry in the matter was only a historical exception²⁸. In fact, as we mentioned, in general the judiciary itself recognized a different treatment against victims before VAWA 1994. Because of this acknowledgment both the law and the judicial practices encouraged a change in the approach in benefit to the victims, demanding judges to ask for more investigation in DV cases, a better understanding of the victims’ behavior (including the Battered Woman’s Syndrome, and other psychological effects of abuse that make victims reluctant to report or to keep claiming), and an increase in the severity toward aggressors. The interesting thing is that the change has been promoted as not a simple increase in conviction, but also as a matter of a more substantial transformation on the judges’ administrative role, from organization of dockets to commitment with especial DV courts experiences.²⁹ Moreover, the judges’ activity has recognized the need of an integral treatment of the DV public³⁰. In my opinion, this

²⁵ *Id.* at 52, *q.tyng* ANDREW KLEIN, THE CRIMINAL JUSTICE RESPONSE TO DOMESTIC VIOLENCE 143 (2004).

²⁶ See Joel Garner, *What Does “The Prosecution” of Domestic Violence Mean?*, in 4-3 CRIMINOLOGY AND PUBLIC POLICY AUG. 2005, 567-574.

²⁷ See Carolyn B. Ramsey, *Domestic Violence and State Intervention in the American West and Australia, 1860-1930*, 86 INDIANA LAW JOURNAL (forthcoming 2011), available at: <http://ssrn.com/abstract=1662527>. And also, Aya Gruber, *The Feminist War on Crime*, 92 IOWA L. REV. 741 (2007), available at <http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=240055>.

²⁸ See Mae C. Quinn, *Anna Moscovitz Kross and The Home Term Part: a Second Look at The Nation’s First Criminal Domestic Violence Court*, in 41 AKRON L. REV. 733 (2008).

²⁹ OVAW, *supra* note 24, at 27: “Judges have two distinct roles in responding to sexual assault, domestic violence, and stalking cases—administrative and magisterial. In their administrative role, judges are responsible for making courthouses safer and more efficient. This can be accomplished by providing separate waiting rooms for victims, special dockets, and even special courts. In their magisterial role, judges can be critical in holding offenders accountable and ensuring the safety of victims”.

³⁰ *Id.* citing Klein, 2004, *supra* note 25: “In some jurisdictions, judges have been at the forefront in establishing special coordinating councils for sexual assault, domestic violence, and stalking cases. In an increasing number of jurisdictions, judges have used their administrative role to create specialized domestic violence courts, with the goal of enhanced coordination, more consistent intervention to protect victims, and increased offender accountability. These courts seek to link different cases involving the same offender and victim (e.g., custody cases, protection orders, and criminal charges often can be linked to the same offender and victim), so that the same judge is reviewing the cases. These courts typically have specialized intake units, victim-witness advocates, specialized calendars, and intense judicial monitoring of offenders.”

Moreover, the VAWA itself encourages a more broad court’s addressing of DV and other gender based crimes. See, for example, S. REP. 102-197, S. Rep. No. 197, 102ND Cong., 1ST Sess. 1991, SEC 521 (a): AUTHORIZATIONS OF CIRCUIT STUDIES; EDUCATION AND TRAINING GRANTS: “(a) Study.—In order to

recognition is one of the causes for the dependence that outcomes in DV cases have –even more than regular crimes– on decisions made by the police and prosecutors before and during the court’s intervention.

Thus, literature has documented a change in attitudes –or at least in action– in all of the actors of the criminal system prosecution toward DV crime: police, prosecutors, and judges.

II. Outcomes: the whole procedure toward a sentence has changed

According with the Bureau of Justice (BJ) Statisticians Erica L. Smith, Matthew R. Durose, and Patrick A. Langan, the issue of biases against DV victims in criminal procedure seems to be overcome. These authors, in the report “State Court Processing of Domestic Violence Cases,”³¹ compared DV and non-DV sexual assault and aggravated assault on prosecution, conviction, and sentencing outcomes³² in 15 counties.³³

The measures covered 11 levels: 1. Prosecution rate, 2. Overall conviction rate, 3. Felony conviction rate, 4. Violent felony conviction rate, 5. Felony sexual assault/aggravated assault conviction rate, 6. Misdemeanor conviction rate, 7. Violent misdemeanor conviction rate, 8. Misdemeanor sexual assault/aggravated assault conviction rate, 9. Prison incarceration rate, 10. Jail incarceration rate, and 11. Average incarceration sentence length.

Their general findings were summarized as follows:

On 7 of the 11 measures, no differences were found between DV and non-DV sexual assault case processing. On the other four case processing measures, DV sexual assault defendants had a higher prosecution rate (89% versus 73%); higher overall conviction rate (98% versus 87%); higher felony sexual assault conviction rate (80% versus 63%); and a longer average incarceration sentence (6 years versus 3¼ years). Like sexual assault

gain a better understanding of the nature and the extent of gender bias in the Federal courts, the circuit judicial councils are encouraged to conduct studies of the instances, if any, of gender bias in their respective circuit. The studies may include an examination of the effects of gender on–

“(1) the treatment of litigants, witnesses, attorneys, jurors, and judges in the courts, including before magistrate and bankruptcy judges;

“(2) the interpretation and application of the law, both civil and criminal;

“(3) treatment of defendants in criminal cases;

“(4) treatment of victims of violent crimes;

“(5) sentencing;

“(6) sentencing alternatives, facilities for incarceration, and the nature of supervision of probation and parole;

“(7) appointments to committees of the Judicial Conference and the courts;

“(8) case management and court sponsored alternative dispute resolution programs;

“(9) the selection, retention, promotion, and treatment of employees;

“(10) appointment of arbitrators, experts, and special masters; and

“(11) those aspects of the topics listed in section 512 of subtitle A that pertain to issues within the jurisdiction of the Federal courts.

³¹ ERICA L. SMITH, MATTHEW R. DUROSE, AND PATRICK A. LANGAN, U.S. DEPARTMENT OF JUSTICE, STATE COURT PROCESSING OF DOMESTIC VIOLENCE CASES (2008), available at <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=419>.

³² See *id.* at 2.

³³ *Id.* at 1: The counties were located in Arizona (Pima), California (Alameda, Orange, Riverside, San Diego, and Santa Clara), Florida (Dade, Palm Beach, and Pinellas), Georgia (Fulton), Indiana (Marion), Ohio (Franklin), Tennessee (Shelby), and Texas (El Paso, and Travis). *Id.* at 1-2: The authors based their research in 2,629 violent felony cases of “[p]ersons charged with domestic or non-domestic violence [...] tracked in court records from May 2002, when charges were filed, through final court disposition.”

defendants, no differences were found on 7 of 11 measures of case processing between DV and non-DV aggravated assault defendants. On the other four measures, DV aggravated assault defendants had a higher overall conviction rate (87% versus 78%); higher violent felony conviction rate (61% versus 52%); higher aggravated assault conviction rate (54% versus 45%); and higher misdemeanor conviction rate (22% versus 16%).³⁴

Then, they concluded that “the case processing outcomes for DV cases were *the same as or more serious* than the outcomes for non-DV cases.”³⁵

Saying in this way, the biases problem seems to be closed.

However, since a variety of authors have historically identified biases in decisionmaking in the entire process toward a sentence, and VAWA mandated particular policies and roles to several actors of the criminal system, it is important to take a second glance in the topic, analyzing different steps of the prosecution process to check if the BJ Staticians are right. These stages are arrest, prosecution itself and sentencing.

A. Arrest.

Regarding the arrest rates, there are two issues to be addressed. In the first place, research has detected an effective increase in arrest after the adoption of “mandatory arrest” policies. In the second place, this change seems not to affect deeply police departments’ attitudes.

Andrew Klein –who believes that mandatory arrest policies have a positive effect in prevention (reduction of reabuse) and victims’ satisfaction with the process³⁶– reports that increases of the arrest rate in DV incidents vary state by state, and that only some states (with mandatory arrest policies) exceed the average DV victimization measured in surveys³⁷. Other authors, however, also refer a very low rate of arrest for stalking in the context of IPV³⁸.

³⁴ *Id.*

³⁵ *Id.* *Emphasis added.*

³⁶ KLEIN, *supra* note 4, at 10-12, *citing* several studies: Maxwell, C., J. Garner, and J. Fagan, “The Effects of Arrest on Intimate Partner Violence: New Evidence From the Spouse Assault Replication Program,” Research in Brief, Washington, DC: U.S. Department of Justice, National Institute of Justice, July 2001, NCJ 188199, available at <http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=188199>; Felson, R., J. Ackerman, and C. Gallagher, “Police Intervention and the Repeat of Domestic Assault,” Final report for National Institute of Justice, grant number 2002-WG-BX-2002, Washington, DC: U.S. Department of Justice, National Institute of Justice, June 2005, NCJ 210301, available at <http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=210301>; Wordes, M., “Creating a Structured Decision-Making Model for Police Intervention in Intimate Partner Violence,” Final report for National Institute of Justice, grant number 96-IJ-CX-0098, Washington, DC: U.S. Department of Justice, National Institute of Justice, February 2000, NCJ 182781, available at <http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=182781>; Jolin, A., W. Feyerherm, R. Fountain, and S. Friedman, “Beyond Arrest: The Portland, Oregon Domestic Violence Experiment,” Final report for National Institute of Justice, grant number 95-IJ-CX-0054, Washington, DC: U.S. Department of Justice, National Institute of Justice, 1998, NCJ 179968, available at <http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=179968>; Lyon, E., “Special Session Domestic Violence Courts: Enhanced Advocacy and Interventions, Final Report Summary,” Final report for National Institute of Justice, grant number 98-WE-VX-0031, Washington, DC: U.S. Department of Justice, National Institute of Justice, October 2002, NCJ 197860, available at <http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=197860>; Lyon, E., “Impact Evaluation of Special Session Domestic Violence: Enhanced Advocacy and Interventions,” Final report for National Institute of Justice, grant number 2000-WE-VX-0014, Washington, DC: U.S. Department of Justice, National Institute of Justice, April 2005, NCJ 210362, available at <http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=210362>.

³⁷ *Id.* at 10: “At least one study documents that actual per capita arrests for domestic violence across an entire (albeit small) state exceeded the national estimates of domestic violence as determined by the NCVS. A Rhode Island study

But, beyond the data, authors have detected that change in police action depends more on how much accountable the law makes the police officers over their failures³⁹ than on training or educational efforts⁴⁰. In other words, as I mentioned before, there is not a real attitudinal change in the police. In fact, the Inter-American Court of Human Rights (IACHR) reported that police departments in the US still see DV as a “family problem” to be solved by the couple and not by the criminal system⁴¹. This belief has caused, for instance, the remaining of certain reluctance to arrest and to enforce restraining orders in US police departments⁴². Worse, according to Hirschel *et al.*, there is a higher incidence of “dual arrest” in DV than in non-DV events, particularly when the jurisdiction has mandatory arrest rules.⁴³ After the isolation of different types of victims and

found in 2004 that per capita domestic violence arrests were 10.5 per 1,000 females (including both male and female suspects of female victims) and were 2.9 per 1,000 males (including both male and female suspects of male victims), higher than the national estimated incidence rates of 8.6 per 1,000 females and 2.5 per 1,000 males. Other, disparate jurisdictions have similarly demonstrated high per capita arrest rates: Wichita, Kan. 12.1/1,000 (2000); Chicago, 6.9/1,000 (1997); and Nevada, 5.4/1,000 (2001)”, *citing* Klein, A., “The Criminal Justice Response to Domestic Violence,” Belmont, CA: Thomson/Wadsworth, 2004; and Klein, A., “Rhode Island Domestic Violence Shelter and Advocacy Services: An Assessment,” Waltham, MA, BOTEC Analysis Corporation and Rhode Island Justice Commission, June 29, 2005, available at <http://www.rijustice.ri.gov/sac/Reports/Final%20ShelterEval%209-20-05.pdf>.

³⁸ *Id.* at 11: “Stalking arrests are rare, nowhere near the estimated number of stalkers. A pioneering study determined that, although 16.5 percent (in a sample of 1,731) of all domestic violence incident reports filed in Colorado Springs, Colo., involved stalking, in all but one incident the suspect was charged with a lesser offense —harassment, violation of a protective order, or another non-stalking domestic violence offense,” *citing* Tjaden, P., and N. Thoennes, “Stalking in America: Findings From the National Violence Against Women Survey,” Research in Brief, Washington, DC: U.S. Department of Justice, National Institute of Justice, grant number 93-IJ-CX-0012, April 1998, NCJ 169592, available at <http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=169592>; and Tjaden, P., and N. Thoennes, “Stalking: Its Role in Serious Domestic Violence Cases,” Final report for National Institute of Justice, grant number 97-WT-VX-0002, Washington, DC: U.S. Department of Justice, National Institute of Justice, January 2001, NCJ 187346, available at <http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=187346>.

³⁹ HIRSCHHEL, *supra* note 16, at 71: “In sum, domestic violence arrest laws have significant effects on agency level arrests in intimate partner cases. At the agency, or level two model, arrests are significantly more likely to occur in mandatory and preferred agencies independent of other agency and individual factors included in the model. At the incident level, domestic violence laws influence arrest practices for certain offense characteristics such as incident location and offense seriousness and to a lesser extent offender characteristics. However, these laws do not significantly increase the log-odds of females being arrested”.

⁴⁰ KLEIN, *supra* note 4, at 35, *citing*: Feder, L. “Police Handling of Domestic Violence Calls: An Overview and Further Investigation,” WOMEN AND CRIMINAL JUSTICE 10(2) (1999): 49-68, NCJ 177884, available at <http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=177884>; Finn, M., B. Blackwell, L. Stalans, S. Studdard, and L. Dugan, “Dual Arrest Decisions in Domestic Violence Cases: The Influence of Departmental Policies,” CRIME AND DELINQUENCY 50(4) (October 2004): 565-589, NCJ 207463, available at <http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=207463>; and Smitley, M., S. Green, and A. Giacomazzi. “Collaborative Effort and the Effectiveness of Law Enforcement Training Toward Resolving Domestic Violence,” Final report for National Institute of Justice, grant number 97-WE-VX-0131, Washington, DC, U.S. Department of Justice, National Institute of Justice, November 2000, NCJ 191840, available at <http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=191840>.

⁴¹ ORGANIZATION OF AMERICAN STATES, THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS (IACHR), ACCESS TO JUSTICE FOR WOMEN VICTIMS OF VIOLENCE IN THE AMERICAS, OEA/Ser.L/V/II, Doc. 68, Jan. 20, 2007, English Version, available at <http://www.cidh.org/women/Access07/Report%20Access%20to%20Justice%20Report%20English%20020507.pdf>, *citing* ACLU’S RESPONSE TO THE IACHR’S QUESTIONNAIRE ON ACCESS TO JUSTICE, 2006, p. 70.

⁴² *Id.*

⁴³ HIRSCHHEL, *supra* note 16, at iv: “Findings: Arrest practices. A total of 213,598 (37.0%) of the 577,862 assault and intimidation incidents to which the police responded resulted in arrest. This number comprises 206,370 (35.7%) incidents in which the police made one or more arrests and 7,228 (1.3%) situations in which the responding officers

offenders, these authors concluded that biases against victims are still present in the arrest practices, particularly when victims are part of less powerful groups⁴⁴. The VAWA 2005 included more sources to reduce this problem, particularly among minority groups⁴⁵. Fortunately, the STOP Programs show a dramatic incidence in the reduction of “dual arrest.”⁴⁶

B. Prosecution.

A second stage in the decisionmaking process is the prosecution. Once the police direct a reported DV offender to the prosecutor office, or the victim by herself (or himself) goes there⁴⁷, the prosecutors should make decisions. These decisions were historically against prosecution⁴⁸.

arrested both of the involved parties. Arrest rates were higher for intimate partner (49.9%) and other domestic violence cases (44.5%) than for cases involving acquaintances (29.1%) and strangers (35%). Dual arrest rates also were higher for intimate partner (1.9%) and other domestics (1.5%) than for acquaintance (1.0%) and stranger (0.8%) cases. Factors influencing these variations in arrest rates were examined next”.

⁴⁴ See *Id.* at 69-70.

⁴⁵ See VAWA 2005, Pub. L. No. 109-162, SEC. 102 (b) (2) (G) GRANTS TO ENCOURAGE ARREST AND ENFORCE PROTECTION ORDERS IMPROVEMENTS: “(b) GRANTEE REQUIREMENTS.—Section 2101 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796hh) is amended—

“(2) in subsection (b)—

“(G) by adding at the end the following: ‘(9) To develop State, tribal, territorial, or local policies, procedures, and protocols for preventing dual arrests and prosecutions in cases of domestic violence, dating violence, sexual assault, and stalking, and to develop effective methods for identifying the pattern and history of abuse that indicates which party is the actual perpetrator of abuse’”.

⁴⁶ OVAW, *supra* note 24, at 14: “The overall dual arrest rate for arrests made by STOP Program-funded officers was 3.3 percent, dramatically lower than most other reported rates,” *citing* KLEIN, 2004, *supra* note 25.

⁴⁷ GARNER, *supra* note 26, at 569: “Large proportions of prosecutions do not result from arrests but from victim complaints directly to the prosecutor’s office or to local magistrates,” *citing* some studies: 71% in 1987 in Indianapolis, David A. Ford and Mary Jean Regoli, “The Preventive Impact of Policies for prosecuting wife batterers,” in Ed. Eve Buzawa and Carl Buzawa, *Domestic Violence: The Changing Criminal Justice Response*, Westport, Conn.: Auburn House, 1992; 86.3% in 1984 in Milwaukee, Janel Schmidt and Ellen Steury, “Prosecutorial discretion in filing charges in domestic violence cases”, 1989, *CRIMINOLOGY* 27:487-510; and 66% approximately in Maryland, Joel Garner, Laura Hickman, Sally Simpson, Leana Allen, and Daniel Woods, “Encouraging the Use of Arrest for Domestic Violence in Maryland: An Evaluation,” unpublished report to the Maryland Governor’s Office of Crime, Control and Prevention, 1999; and “Pro-prosecution Initiative Evaluation,” Maryland Network Against Domestic Violence, Final Report to the Governor’s Office of Crime, Control and Prevention, 2001.

⁴⁸ See OVAW, *supra* note 24, at 25: “A study conducted in Minneapolis in the early 1980s showed that fewer than 2 percent of those arrested for domestic violence were ever prosecuted”, *citing* Sherman, L., and Berk, R., “The Specific Deterrent Effects of Arrest on Domestic Assault,” 1984, *AMERICAN SOCIOLOGICAL REVIEW* 49:261–272. See also Barbara E. Smith, Robert Davis, Laura B. Nickles, and Heather J. Davies, *Evaluation of Efforts to Implement No-Drop, Policies: Two Central Values in Conflict, Final Report*, National Institute of Justice, grant number 98-WT-VX-0029, American Bar Association, Criminal Justice Section, Funded by the National Institute of Justice, Washington, DC, April 2001, Document No.: 187772, p. iii, available at <http://www.ncjrs.gov/pdffiles1/nij/grants/187772.pdf>: “During the late 1980s and 1990s, the law enforcement response to domestic violence changed remarkably. Legal impediments to police officers to make warrantless arrests for misdemeanors when they did not witness were removed. They were replaced by presumptive arrest statutes (under which police were encouraged to make arrests) or statutes making arrest mandatory when probable cause existed. Many victim advocates were pleased with these changes, arguing that taking the decision to arrest away from victims, shielded them from possible retaliation by batterers.”

Nowadays, the scenario is different. For instance, Erika Smith *et al* concluded that there is not a significant difference in prosecution rates between DV and non-DV rates⁴⁹. However, other authors have detected differences between jurisdictions with less application of “non-drop policies.”⁵⁰ In fact, Erika Smith *et al* recognized that the cause of higher prosecution and lower diversion must be the implementation of “non-drop policies.”⁵¹ In addition, while these authors have said DV are even more charged than non-DV assaults⁵², others have indicated that

⁴⁹ See SMITH, *supra* note 31, at 2:

Table 2. Prosecution rates of domestic and non-domestic violence defendants charged in 15 large counties during May 2002				
Prosecution outcome	Percent prosecuted, for felony defendants charged with —			
	Sexual assault		Aggravated assault	
	Domestic	Non-domestic	Domestic	Non-domestic
All defendants	100%	100%	100%	100%
Prosecuted	88.9	73.0	65.6	66.9
Not prosecuted	11.1	27.0	34.4	33.1
Number of defendants	90	174	520	1,018

⁵⁰ KLEIN, *supra* note 4, at 36: “A total of 120 studies from over 170 mostly urban jurisdictions in 44 states and the District of Columbia (and a few foreign countries) of intimate-partner prosecutions between 1973 and 2006 found the average arrest prosecution rate was 63.8 percent, ranging from a low of 4.6 percent of 802 arrests in Milwaukee in 1988-1989 to 94 percent of 3,662 arrests in Cincinnati in 1993-1996. The rate of offense prosecution was lower, with an average of 27.4 percent, ranging from a low of 2.6 percent for more than 5,000 offenses in Detroit in 1983 to 72.5 percent for more than 5,000 offenses reported in Boulder County, Colo., in 2003-2005”, *citing* Garner, J., and C. Maxwell, “Prosecution and Conviction Rates for Intimate Partner Violence,” Shepherdstown, WV: Joint Centers for Justice Studies, 2008: 49. *Also, Id.*: “Jurisdictions with specialized domestic violence prosecution programs generally boast higher rates. A study of San Diego’s City Attorney’s Office documented that prosecutors prosecuted percent of cases brought by police. Similarly, specialized prosecutors in Omaha, Neb., prosecuted 88 percent of all police domestic violence arrests. In several of these sites, comparisons before and after implementation of the specialized prosecution program found marked increases in prosecutions. In Everett, Wash., dismissals dropped from 79 percent to 29 percent, and in Klamath Falls, Ore., they dropped from 47 percent to 14 percent,” *citing* SMITH, *supra* note 48.

⁵¹ SMITH, *supra* note 31, at 3.

⁵² *Id.* at 2:

“prosecutions of intimate-partner stalking and intimate-partner sexual assault are rare.”⁵³ In addition, a report showed a higher dismissal rate for DV misdemeanors, when compared with other types of prosecutions.⁵⁴

Among the reasons for prosecutors do not prosecute we can account the victim’s reluctance to participate in the process. In fact, the “no-drop policies” are caused for this phenomenon.⁵⁵ Moreover, even in studies like the performed by the Bureau of Justice, a major recognized cause (78%) for dismissal or declination of prosecution in DV sexual and aggravated assault was the lack of victim’s cooperation. Actually, in the BJ study the authors did not put this

Table 1. Domestic and non-domestic violence defendants charged in 15 large counties during May 2002, by arrest charge

Most serious arrest charge ^a	Percent of felony defendants charged with —		
	Total	Domestic violence	Non-domestic violence
All defendants	100%	100%	100%
Murder	1.6	1.0	1.8
Sexual assault ^b	10.0	10.8	9.7
Robbery	16.6	1.0	23.9
Aggravated assault	58.5	62.2	56.8
Intimidation ^c	4.5	8.4	2.7
Other violent ^d	8.8	16.7	5.1
Number of defendants	2,629	836	1,793
Percent of all defendants	100%	31.8%	68.2%

Note: Detail may not sum to total because of rounding. Data based on cases adjudicated during the 1-year study period.
^aDefendants may have more than one arrest charge.
^bIncludes rape.
^cIncludes stalking and harassment.
^dIncludes kidnapping, child abuse, and other unspecified violent offenses.

⁵³ KLEIN, *supra* note 4, citing Miller, N., “Stalking Laws and Implementation Practices: A National Review for Policymakers and Practitioners,” Final report for National Institute of Justice, grant number 97-WT-VX-0007, Washington, DC: U.S. Department of Justice, National Institute of Justice, October 2001, NCJ 197066, available at <http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=197066>; and Miller, N., “What Does Research and Evaluation Say About Domestic Violence Laws? A Compendium of Justice System Laws and Related Research Assessments,” Alexandria, VA: Institute for Law and Justice, December 2005, available at <http://www.ilj.org/publications/dv/DomesticViolenceLegislationEvaluation.pdf>.

⁵⁴ OVAW, *supra* note 24, at 26: “Data reported for 2004 by STOP Program-funded prosecution offices showed a dismissal rate of 35 percent for domestic violence misdemeanors, when compared with other types of dispositions. Studies of other localities showed that:

“- Eighty percent of domestic assault cases were dismissed in the Albuquerque, NM, Metropolitan Court in 2004, compared with 34 percent of drunk driving cases.

“- In Bernalillo County, NM, the dismissal rate was reported to be almost 90 percent.

“- Dismissal rates of domestic violence cases in Florida were reported at 72 percent in the Orange and Osceola County Judicial Circuit, and 69 percent in the Polk, Highlands, and Hardee County Judicial Circuit in 2003.

“- Only 20 percent of criminal stalking cases in Utah resulted in convictions in 2002,” citing Gallagher, M., “8 of 10 Assault Cases Dismissed,” 2005, Albuquerque Journal, 1 May; “Officials Push Domestic Violence Initiatives,” Editors, 2004, Albuquerque Journal, 15 November, p. A10; Owens, S., “Domestic Violence Cases Fuel Dispute,” Orlando Sentinel, November 26th of 2004, p. B1; and Bryson, A.J., “A Tide of Violence,” Deseret Morning News (Salt Lake City, UT), August 16th of 2004, p.A01.

⁵⁵ See, for instance, S. REP. 102-197, S. Rep. No. 197, 102ND Cong., 1ST Sess. 1991, p. 45: “Unfortunately, our willingness to see violence against women as criminal behavior of enormous scope and seriousness is encouraged by the unwilling silence of many survivors.” Also SEC. 512 (15): TRAINING PROVIDED BY GRANTS: “(15) proper and improper interpretations of the defenses of self-defense and provocation, and the use of expert witness testimony on battered woman syndrome.”

factor in their tables because “*comparable information was not available for non-DV cases.*”⁵⁶ Other factors, alleged by prosecutors as reasons to dismiss the DV cases, are “request of victim, lack of evidence, and plea bargain.”⁵⁷

Looking at the situation in this manner, should we not attribute biases to the no-prosecution decision? I think at minimum they cannot be discarded. A basic reason for this is the fact that rates of prosecution in DV in relatively recent times have increased in jurisdictions with or with more STOP programs⁵⁸. Then, one could conclude that the differences in decisions are still rooted in the awareness of prosecutors toward more aggressive prosecutions (then, less prejudices).

Some research in this idea was the performed by Barbara E. Smith, Robert Davis, Laura B. Nickles, and Heather J. Davies to evaluate the implementation of “no-drop policies.”⁵⁹ They compared the expectation and opinions about a “hard” or “soft” no-drop policy of several actors of the criminal procedure and measured the effects on dismissal and sentencing in jurisdictions before and after the implementation of such a policy⁶⁰. The samples were taken from “200 domestic violence court cases during the year prior to implementation of the no-drop policy and 200 cases after the implementation of the no-drop policy.”⁶¹ They found a significant improvement in prosecution rates (decrease of dismissal, increase of adjudication of guilt, and increase of cases going to trial)⁶². They concluded, among other ideas, that prosecutors do not

⁵⁶ SMITH, *supra* note 31, at 2. *Emphasis added.*

⁵⁷ OVAW, *supra* note 24, at 26.

⁵⁸ *Id.*: “Prosecutors funded under the STOP Program filed 209,374 new charges during 2004. Seventy-nine percent of those charges were domestic violence charges—59 percent misdemeanor domestic violence, 13 percent felony domestic violence, and 7 percent domestic violence ordinance. Table 8 shows the distribution of charges and the conviction rates for those cases disposed of by STOP Program-funded prosecutors during 2004:”

Table 8. Distribution of new charges filed by STOP Program-funded prosecutors and percentage of dispositions resulting in convictions

Charge	Percentage of new charges filed (N = 209,374)	Percentage of dispositions resulting in convictions (N = 97,633)
All charges	100	64
Misdemeanor domestic violence	59	62
Felony domestic violence	13	67
Violation of protection order	8	73
Domestic violence ordinance	7	59
Felony sexual assault	4	87
Violation of probation/parole	4	63
Other	5	NA

NA = not available

NOTE: Of the new charges filed, 152,562 were disposed of. Dispositions resulting in convictions include deferred adjudications. “Other” includes misdemeanor sexual assault, misdemeanor stalking, violations of other court orders, other charges, violations of bail, and homicide related to sexual assault, domestic violence, and/or stalking.

⁵⁹ SMITH, *supra* note 48.

⁶⁰ *Id.* at iv-v.

⁶¹ *Id.* at vi.

⁶² *Id.* at 27: “We compared time between arraignment and case disposition before and after the no-drop policy went into effect [... The] processing time declined from 109 days to 80 days. [In addition,] dismissals declined dramatically from 79% of dispositions to just 26% of dispositions. Conversely, adjudications of guilt (by plea or trial) increased from 19% to 53% and diversion dispositions increased from 2% to 22%. Figure 4.3 shows that the

make their decisions without an analysis of the merit of the case. Then, beyond the victim willingness to participate of the process, prosecutors' offices really increase the prosecutions based in factors that could improve the likelihood of convictions. In other words, "the term 'evidenced-based' prosecution probably fits [prosecutors'] practices [in jurisdiction that adopted this policy] better than the phrase 'no-drop.'"⁶³

Thus, we can say that prosecutors' offices' attitude toward decision (about to charge or not to charge, for which crime to charge, and for what sentences) is extremely important. Also, we can say this attitude has been increasingly more serious, and can be even more serious with the adoption of "no-drop policies."

C. Sentencing.

The judicial decision making is only the final stage in the criminal treatment of DV. Because of that, it is difficult to plainly accept the results of the Bureau of Justice study without some considerations.

First of all, it is important to note that several studies have noticed higher convictions rates in DV cases⁶⁴. However, the discover of more convictions and for more time in DV crimes

implementation of the no-drop policy also was accompanied by a large increase in trials, from 1 % to 1 0%. Four in five of the trials held after the shift in policy were won by prosecutors."

⁶³ *Id.* at 78.

⁶⁴ KLEIN, *supra* note 4, at 37: "Of those [cases] that go to trial, not all prosecutions result in convictions. However, studies indicate that, in general, domestic violence prosecutions that go to trial routinely result in court convictions. "Not guilty" findings are rare. Studies document findings that range from a high of only 5.0 percent in Ohio, to 2.7 percent in Massachusetts, to a low of 1.6 percent in North Carolina. A study of felony domestic violence prosecutions in Brooklyn, N.Y., found a similarly low "not guilty" rate of only 2 percent," *citing* several studies: Belknap, J., D. Graham, J. Hartman, V. Lippen, G. Allen, and J. Sutherland, "Factors Related to Domestic Violence Court Dispositions in a Large Urban Area: The Role of Victim/Witness Reluctance and Other Variables," Executive summary for National Institute of Justice, grant number 96-WT-NX-0004, Washington, DC: U.S. Department of Justice, National Institute of Justice, August 2000, NCJ 184112, available at <http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=184112>; Buzawa, E., G. Hotaling, A. Klein, and J. Byrnes, "Response to Domestic Violence in a Pro-Active Court Setting," Final report for National Institute of Justice, grant number 95-IJ-CX-0027, Washington, DC: U.S. Department of Justice, National Institute of Justice, July 1999, NCJ 181427, available at <http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=181427>; Friday, P., V. Lord, M. Exum, and J. Hartman, "Evaluating the Impact of a Specialized Domestic Violence Police Unit," Final report for National Institute of Justice, grant number 2004-WG-BX-0004, Washington, DC: U.S. Department of Justice, National Institute of Justice, May 2006, NCJ 215916, available at <http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=237505>; and Newmark, L., M. Rempel, K. Diffily, and K. Kane, "Specialized Felony Domestic Violence Court: Lessons on Implementation and Impacts from the Kings County Experience," Final report for National Institute of Justice, grant number 97-WT-VX-0005, Washington, DC: U.S. Department of Justice, National Institute of Justice, October 2001 (NCJ 191861) and 2004 (NCJ 199723), available at <http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=191861> and <http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=199723>.

See also id.: "For most domestic violence cases that do not go to trial, an analysis of 85 domestic violence prosecution studies found an overall conviction rate of 35 percent, ranging from a low of 8.1 percent of 37 cases prosecuted in Milwaukee between 1988 and 1989 to a high of 90.1 percent of 229 cases in Brooklyn, N.Y., prosecuted in 1997. If one very large study of 123,507 Maryland prosecutions from 1993 to 2003 is removed, the average conviction rate increases to almost half, 47.7 percent. In three statewide prosecution studies of tens of thousands of domestic violence cases, similar conviction rates ranged from one-third in North Carolina to more than one-half in South Carolina," *citing*: Garner, J., and C. Maxwell, "Prosecution and Conviction Rates for Intimate Partner Violence," Shepherdstown, WV: Joint Centers for Justice Studies, 2008: 49; Bible, A., and A. Weigl, "Cries

than in non-DV crimes⁶⁵ does not necessarily mean the absence of remaining biases against victims.

of Abuse Unheeded, Assaults Rise to Murders.” News and Observer [Raleigh, NC], May 18-20, 2003; Brundrett, R., C. Roberts, and C. Leblanc, “S.C. Dismisses 54 Percent of Worst Domestic Violence Cases,” The State [Columbia, SC], May 20, 2001.

⁶⁵ SMITH, *supra* note 31, at 1-3:

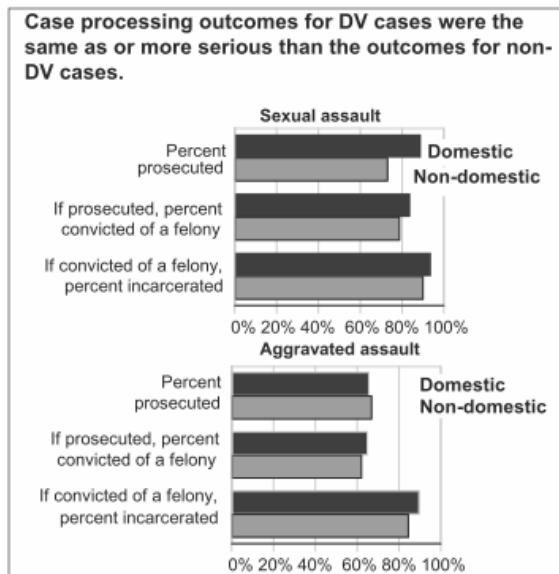


Table 3. Conviction rates of prosecuted domestic and non-domestic violence defendants charged in 15 large counties during May 2002

Adjudication outcome	Percent of prosecuted felony defendants			
	Sexual assault		Aggravated assault	
	Domestic	Non-domestic	Domestic	Non-domestic
All prosecuted defendants	100%	100%	100%	100%
Convicted	97.5%	87.4%	86.5%	78.4%
Felony offense	83.8	78.7	64.8	62.1
Violent offense	83.8	72.4	61.3	52.1
Same offense as arrest charge	80.0	63.0	54.3	45.1
Misdemeanor offense	13.8	8.7*	21.7	16.3
Violent offense	13.8	7.9*	16.4	14.5
Same offense as arrest charge [†]	8.8	3.1*	14.1	12.8
Not convicted	2.5%	12.6%	13.5%	21.6%
Acquitted	1.3	0.0*	1.5	1.3*
Prosecutorial diversion /deferred adjudication	1.3	12.6*	12.0	20.3
Number of prosecuted defendants	80	127	341	681

Note: Detail may not sum to total because of rounding.

*Based on 10 or fewer sample cases.

[†]Conviction offense was the same as the arrest charge but reduced to a misdemeanor.

Table 4. Incarceration rates of convicted domestic and non-domestic violence offenders charged in 15 large counties during May 2002

Sentence type	Percent of felony defendants convicted and sentenced to incarceration			
	Sexual assault		Aggravated assault	
	Domestic	Non-domestic	Domestic	Non-domestic
All convicted defendants	100%	100%	100%	100%
Incarceration	93.8%	90.0%	89.6%	84.5%
Prison	57.8	52.5	36.8	32.0
Jail	35.9	37.5	52.7	52.5
Non-incarceration	6.3%	10.0%	10.4%	15.5%
Probation	6.3	10.0*	10.4	15.2
Other	0.0	0.0*	0.0	0.3*
Number of convicted defendants	64	80	182	297

Note: Detail may not sum to total because of rounding. Data on sentence type were missing for 1.2% of domestic cases and 2.6% of non-domestic cases. Other sentences may include fines, community service, restitution, and treatment.

*Based on 10 or fewer sample cases.

Table 5. Incarceration sentence lengths of convicted domestic and non-domestic violent offenders charged in 15 large counties during May 2002

Incarceration sentence length	Felony defendants convicted of —			
	Sexual assault		Aggravated assault	
	Domestic	Non-domestic	Domestic	Non-domestic
Mean	71 mos.	39 mos.	27 mos.	25 mos.
Median*	24	36	12	10
Number of incarcerated defendants	59	72	157	251

Note: Data on sentence length were missing for 3.1% of domestic cases. Sentence lengths were calculated including both jail and prison incarceration.

*The difference in median incarceration sentence length for defendants convicted of sexual assault was not statistically significant. Incarceration sentence length was 24 months or less for 51% of DV sexual assault defendants and 49% of non-DV sexual assault defendants.

In my opinion, the BJ statistic study has four potential problems.

First, it does not mention what happens at arrest and prosecution decisionmaking level. On the one hand, the first filter that many DV cases have is how the police departments treat the first report. We already saw that this filter stage is still more biased than others. On the other hand, the conviction obviously depends greatly on what the prosecutor asked. Then, if the prosecutor is trying to fit the charge with the factors that make the charge likely to be accepted⁶⁶, it is not surprising a higher rate of convictions in DV cases than in non-DV cases.

Second, the study did not make a comparison between counties with more and less aggressive prosecution and sentencing policies in DV cases. Other studies do make this comparison. For instance, it has been discovered that specialized DV units, which focus on the gathering of evidence and on the victim treatment, improve the likelihood of conviction⁶⁷.

Third, the selection of counties was made only in the basis of voluntary participation in the study⁶⁸. This may prevent us from making general extensions of its findings.

Table 9. Criminal justice status at time of arrest of domestic and non-domestic violence defendants charged in 15 large counties during May 2002

Status at time of arrest	Sexual assault		Aggravated assault	
	Domestic	Non-domestic	Domestic	Non-domestic
Total	19.5%	17.5%	26.4%	18.0%
Probation	12.2%	14.9%	15.4%	10.0%
Pretrial release	3.7	1.3*	4.6	5.8
Parole	3.7	1.3*	3.0	1.5*
In custody	0.0	0.0*	1.3	0.3*
Other	0.0	0.0*	2.1	0.4*
Number of defendants	82	154	474	952

Note: Detail may not sum to total because of rounding. Data on criminal justice status at time of arrest were missing for 8.9% of domestic cases and 7.2% of non-domestic cases. Criminal justice status at the time of arrest may not have been for a domestic violence offense. Some defendants with a criminal justice status had more than one type of status. For those cases, the status indicated is the most serious.

*Based on 10 or fewer sample cases.

See also KLEIN, *supra* note 4, at 37: “As important, multiple studies also find that convictions can be consistently obtained that include the most intrusive disposition, sentences of incarceration [...] Many other disparate court studies document incarceration rates ranging from 76 percent to 21 percent.”

⁶⁶ See *supra* note 60.

⁶⁷ KLEIN, *supra* note 4, at 33: “Specialized domestic violence units are generally associated with more extensive inquiries by police department call takers — asking if weapons are involved, advising callers to stay on the line until police arrive, asking if children are present, whether the suspect uses drugs/alcohol, whether restraining orders are in effect, and whether the suspect is on probation or parole. Domestic violence units are also more likely to amass evidence to turn over to prosecutors. The specialized unit in Mecklenburg County, Charlotte, N.C., collected evidence in 61.8 percent of its cases, compared to only 12.5 percent of cases collected by patrol officers. In addition, whereas 30 percent of victims handled by regular patrols declined to prosecute, only 8 percent of victims handled by the specialized unit declined to prosecute,” *citing* some studies: Jolin, A., W. Feyerherm, R. Fountain, and S. Friedman, “Beyond Arrest: The Portland, Oregon Domestic Violence Experiment,” Final report for National Institute of Justice, grant number 95-IJ-CX-0054, Washington, DC: U.S. Department of Justice, National Institute of Justice, 1998, NCJ 179968, available at <http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=179968>; Townsend, M., D. Hunt, S. Kuck, and C. Baxter, “Law Enforcement Response to Domestic Violence Calls for Service,” Final report for National Institute of Justice, grant number 99-C-008, Washington, DC: U.S. Department of Justice, National Institute of Justice, February 2005, NCJ 215915, available at <http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=237504>; and Friday, *supra* note 57.

⁶⁸ SMITH, *supra* note 31, at 6: “Data collection: State prosecutors and courts in 40 of the 75 largest counties in the nation were asked to participate in a study of how domestic violence cases are handled by the justice system. Of

Finally, and most importantly, the research does not consider three key facts: firstly, the proportion of DV sexual assaults and aggravated assaults are a minimal part of all of all DV cases⁶⁹; secondly, the likelihood of false reports secondary benefits⁷⁰ can be different in DV and non-DV crimes; thirdly, the DV victims usually do not report the first time they suffer the event as non-DV victims regularly do⁷¹.

The last phenomenon has been highly studied by anti-DV researchers, who say that a majority of DV victims only report the abuse after several years from its beginning.⁷² There is a huge work in assessing why victims do not report immediately⁷³, which could disagree in the reasons but which that delayed report is an extended phenomenon in Domestic Violence. This phenomenon is obvious for people who work with DV victims, who almost never know clients who report at the first incident.

those asked to participate, 16 agreed. One of the participating counties was excluded from the analysis in this report because data were not available on felony cases.”

⁶⁹ KLEIN, *supra* note 4, at 6.

⁷⁰ Psychology phenomenon analyzed by judges when they are in front of not-witnessed crimes (generally sexual abuse). A “secondary benefit” is the victim’s gain with a false report. For instance, respect, fame, money, revenge, etc. It should be assessed by confronting it with the “lost” of reporting such as shame, lost of economic sources, social commendation and blaming.

⁷¹ KLEIN, *supra* note 4, at 6: “Victims do not generally report their initial intimate partner victimization but typically suffer multiple assaults or related victimizations before they contact authorities or apply for protective orders”, *citing* the following studies: Finn, M., B. Blackwell, L. Stalans, S. Studdard, and L. Dugan, “Dual Arrest Decisions in Domestic Violence Cases: The Influence of Departmental Policies,” *Crime and Delinquency* 50(4) (October 2004): 565-589, NCJ 207463, available at <http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=207463>; Harrell, A., and B. Smith, “Effects of Restraining Orders on Domestic Violence Victims,” *In Do Arrest and Restraining Orders Work?*, Ed. E. Buzawa and C. Buzawa, Thousand Oaks, CA: Sage, 1996: 214-243; and Keilitz, S., P. Hannaford, and H. Efkenman, “Civil Protection Orders: The Benefits and Limitations for Victims of Domestic Violence,” Final report for National Institute of Justice, grant number 93-IJ-CX-0035, Washington, DC: U.S. Department of Justice, National Institute of Justice, 1997, NCJ 172223, available at <http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=172223>.

⁷² See for instance: COMISIÓN MIXTA DE LOS DERECHOS DE LA MUJER, INFORME DE LA PONENCIA SOBRE LA ERRADICACIÓN DE LA VIOLENCIA DOMÉSTICA [JOINT COMMITTEE OF WOMEN’S RIGHTS, MEMORANDUM ON THE ELIMINATION OF DOMESTIC VIOLENCE ELIMINATION PRESENTATION], in BOLETÍN OFICIAL DE LAS CORTES GENERALES, SECCIÓN CORTES GENERALES, VII LEGISLATURA, SERIE A ACTIVIDADES PARLAMENTARIAS, [OFFICIAL REPORT FOR THE GENERAL COURTS, VII LEGISLATIVE PERIOD, SERIES A PARLIAMENT ACTIVITY], Madrid, Spain, December 4th, 2002, N. 374, p. 54, available in Spanish at <http://es.scribd.com/doc/41938918/v-conclusiones4dic02violencia-cmixtamujer>: “the report usually takes seven to ten years from the first [domestic] violence event, [...] a chronic situation [which...] borders on torture.” “[la denuncia suele tardar de siete a diez años desde la primera situación de violencia [doméstica...], prolongación crónica en el tiempo, [...] rayana con la tortura.”]. See also: Belén Sarasua, Irene Zubizarreta, Enrique Echeburúa, and Paz de Corral, *Perfil Psicopatológico Diferencial de las Víctimas de Violencia de Pareja en Función de la Edad: un Estudio Exploratorio* [Psychopathologic Differential Profile of Partner Violence on Function of Age: a Exploratory Study], in 3 PSICOTHEMA 2007, VOL. 19, pp. 459-464, 460, available in Spanish at <http://www.ehu.es/echeburua/pdfs/1.pdf>. Here, authors indicate that Disorder Domestic Violence victims can present a chronic Post Traumatic Stress Disorder of over 10 years when they first make a report.

⁷³ See generally, Mary Ann Dutton, *Understanding Women’s Responses to Domestic Violence: A Redefinition of Battered Women Syndrome*, 21 HOFSTRA L. REV. 1191 (1993); and Evan Stark, *Re-Presenting Women Battering: From Battered Women Syndrome to Coercive Control*, 58 ALB. L. REV. 973 (1995).

All of these facts, and one the study does considerer –a higher presence of previous conviction in DV defendants⁷⁴–, can perfectly make possible that cases that arrive to sentencing stages in *DV are more likely to be convicted than non-DV cases*. In other words, it is more likely that a report from a DV victim is *true* and that after several incidents there should be *enough proof* for successful evidence based prosecution. Then, if prosecutors are not obtaining that success, one of the explanations is that biases would be still present in the whole decision making process, even if the outcomes of DV and non-DV cases are currently similar. Thus, these biases could be causing that conviction is less present than it should be in DV⁷⁵.

There is a study that can be a confirmation of this hypothesis. Barbara Smith *et al* say that even in jurisdiction with more aggressive policies toward “seriousness” of DV crime treatment, the attitude of judges in their reception has been shown to influence sentencing rates. They affirm that “a successful no-drop policy requires judges who are ‘on board’ with the idea of admitting hearsay or excited utterances from victims and statements from defendants or documentation of prior bad acts”⁷⁶.

Still, there is another phenomenon that can be caused by biases in the DV decision making arena: race and ethnicity influence charging and sentencing. This influence has been observed in a double way. On the one hand, victim’s cooperation decreases when she belongs to minority groups. Authors say this fact can be caused by fear of the system due to cultural barriers,⁷⁷ or by a lack of preparation of the *system* to address minorities’ needs and cultural differences.⁷⁸ In fact, the United Nations Committee on the Elimination of Racial Discrimination the United Nations asserted that, in the US, “African-American women and Latinas may be reluctant to report domestic violence or sexual assault because of the discriminatory treatment of men in their communities by law enforcement and the courts.”⁷⁹ On the other hand, offenders who belong to minorities seem to be more prosecuted than white men, while minority women seem to be less successful in their claims⁸⁰. A possible explanation is a biased prosecution and

⁷⁴ SMITH, *supra* note 31, at 4: “[a]bout 26% of domestic aggravated assault defendants had an active criminal justice status at the time of arrest, compared to 18% of non-domestic aggravated assault defendants. This difference could have influenced how these cases were handled.”

⁷⁵ Assuming it could be even more present than in regular crimes.

⁷⁶ SMITH, *supra* note 48, at 78: “In Omaha, where many judges were described as reluctant to admit these forms of evidence, the no-drop policy was weak and the prosecutor often relented when victims failed to cooperate. On the other hand, in San Diego, where state statutes were strongest and where there was a strong history of admitting such evidence, no-drop prosecution was highly successful. Judges in San Diego came to accept over time that domestic cases could be prosecuted without victim cooperation and were willing to admit essential prosecution evidence.” *Emphasis added*.

⁷⁷ See KLEIN, *supra* note 4, at 39.

⁷⁸ See generally: CATHERINE A. MACKINNON, SEX EQUALITY, 729-730 (2001). Also, OVAW, *supra* note 24, at 34: “American Indians/Alaska Natives, women living in rural jurisdictions, older adults, women who are disabled, people of color, other racial minorities, immigrants, and refugees [are populations that] often face unique challenges and barriers to receiving assistance and support. The portions of VAWA addressing the STOP program, and OVW in its administration of this grant program require states to specify in their implementation planning process how they will use STOP funds to address the needs of underserved victims.”

⁷⁹ UNITED NATIONS COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION THE UNITED NATIONS, DOMESTIC VIOLENCE: ACCESS TO COURT PROCEEDINGS: RESPONSE TO THE PERIODIC REPORT OF THE UNITED STATES TO THE UNITED NATIONS COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION, 2-3 (February 2008), available at <http://www2.ohchr.org/english/bodies/cerd/docs/ngos/usa/USHRN25.doc>.

⁸⁰ See SMITH, *supra* note 31, at 5-6: there is a disparity between the defendants’ and the victims’ race and ethnics:

Table 11. Demographic characteristics of domestic and non-domestic violence defendants charged in 15 large counties during May 2002

Defendant characteristic	Sexual assault		Aggravated assault	
	Domestic	Non-domestic	Domestic	Non-domestic
All defendants	100%	100%	100%	100%
Gender				
Male	100.0%	95.4%	84.0%	81.9%
Female	0.0	4.6*	16.0	18.1
Race				
White	55.6%	53.1%	53.2%	54.8%
Black	31.1	46.9	41.4	43.0
Other race [†]	13.3	0.0*	5.4	2.2*
Hispanic/Latino origin				
Hispanic/Latino	53.9%	42.0%	35.9%	31.9%
Non-Hispanic/Latino	46.1	58.0	64.1	68.1
Age at arrest				
24 or younger	34.8%	32.8%	21.6%	40.9%
25-34	29.2	19.5	33.4	25.0
35-54	32.6	35.1	41.6	31.7
55 or older	3.4	12.6*	3.5	2.5*
Mean	32.3 yrs.	35.4 yrs.	33.8 yrs.	30.6 yrs.
Median	29.0	34.0	33.0	27.0
Number of defendants	90	174	520	1,018

Note: Detail may not sum to total because of rounding. Data were missing on defendant gender for 1% of domestic cases; race for 31.6%; Hispanic origin for 24.9%; age for 1%. Data were missing on defendant race for 16.4% of non-domestic cases.

*Based on 10 or fewer sample cases.

[†]Other race includes American Indians, Alaska Natives, Asians, Native Hawaiians, other Pacific Islanders, and persons identifying two or more races.

sentencing, since the racial and ethnical disparity between the charged offenders and the successful victims does not match with the rates of partner choice in the US⁸¹. Both phenomena –minority women’s participation in prosecution and racial and ethnic biases in the criminal system– are still in study.

Nevertheless, it is important to notice that there is an alternative cause that explains a lower arrest, prosecution and conviction than the really possible in DV cases: worries for effectiveness of these practices in terms of prevention. As long as authors study how to increase

Table 13. Demographic characteristics of domestic and non-domestic violence victims in 29 states and the District of Columbia in 2004

Victim characteristic	Sexual assault		Aggravated assault	
	Domestic	Non-domestic	Domestic	Non-domestic
Total	100%	100%	100%	100%
Gender				
Male	13.6%	12.6%	35.5%	70.9%
Female	86.4	87.4	64.5	29.1
Race				
White	83.9%	81.2%	67.0%	70.1%
Black	14.9	17.8	31.9	28.9
Other race*	1.1	1.0	1.1	1.0
Hispanic/Latino origin				
Hispanic/Latino	8.6%	6.0%	5.9%	6.7%
Non-Hispanic/Latino	91.4	94.0	94.1	93.3
Age at offense				
17 or younger	82.1%	72.6%	11.6%	19.0%
12 or younger	45.7	28.2	5.1	5.0
18-24	6.8	13.8	20.5	26.2
25-34	5.9	6.7	25.8	24.0
35-54	4.8	6.1	37.3	27.3
55 or older	0.5	0.8	5.0	3.6
Number of cases with an arrest	3,993	6,985	25,904	28,925

Note: Detail may not sum to total because of rounding. Data were missing on victim gender for 0.1% of domestic cases; race for 1.6%; Hispanic origin for 9.4%; age for 1.7%. Data were missing on victim gender for 0.5% of non-domestic cases; race for 2.9%; Hispanic origin for 14.5%; age for 3.3%.

*Other race includes American Indians, Alaska Natives, Asians, Native Hawaiians, other Pacific Islanders, and persons identifying two or more races.

Source: National Incident-Based Reporting System, 2004.

⁸¹ According to Ford *et al.*, even though there is an increase of interracial and inter ethnical married and unmarried couples in the US (higher in the case of unmarried sexual partners), in 1990s still “93% of married sexual partners were of the same race, 88% of cohabiting partners and 89% of noncohabiting sexual partners were of the same race, [while] 91% [of the] short-term partnerships were between persons of the same race.” The same authors say that in 2001 an “87% of White adolescents and 85% of Black adolescents reported partners of the same ethnicity, [while] 57% of Latino adolescents reported partners of different ethnicities.” Kathleen Ford, Woosung Sohn, and James M. Lepkowski, *Ethnicity or Race, Area Characteristics and Sexual Partner Choice among American Adolescents*, in 40 THE JOURNAL OF SEX RESEARCH, May 2003, available at http://findarticles.com/p/articles/mi_m2372/is_2_40/ai_105518223/?tag=content:coll. As we see, even though minorities are increasingly choosing partners from other racial or ethnic groups, the prosecution in DV (who are being charged and who are being successful in the Criminal arena) does not match with the racial and ethnic composition of American couples. Saying more simple, for example, if about a 43% of latino men have latino partners (assuming the adolescents’ partner choice is already applied to the population who are currently reporting DV), why, if latino represent a 53.9% of charged offender, does latino women not represent a 23.1% of successful victims (a 43% of the 53.9%), but instead only a 8.6%?

arrest, prosecution and conviction levels, they care if this increase will reduce recidivism and revictimization⁸², and if it is respectful with the victims' desires,⁸³ and defendant's rights⁸⁴. Even the law created more alternatives to conviction to address this kind of crimes⁸⁵. Then, probably because of these concerns many of the decisions made during the criminal procedure seem or are more lenient toward offenders, and even biased against victims. This can be a matter of perspective or personal opinion.

In brief, all of the stages of criminal prosecution of DV have showed an impressive increase in taking into account DV allegations from the report to the sentence. Since changes in the law enforcement have been showed effective and broadly received, we can accept that previous leniency must be caused by biases, as studies argued before and after the VAWA 1994, and that leniency has decreased significantly in the last decades. However, there are still some differences that need to be analyzed, and that can be caused by prejudices and/or by concerns related with prevention and victims and defendants' rights.

III. A comparative approach: research efforts in the topic in Chile

Chile is a Civil Law Latin American democratic country. It has a National Law, and three branches of political power.

Despite of the natural differences in population demographics, it has some points in common with the US. In particular, since Chile suffered a process of "Americanization" of its economy from 1970s⁸⁶, there are some effects in social issues that can be replied in a similar manner to the US experience⁸⁷. But, beyond that specific transference, the biases in the DV

⁸² See, for instance: KLEIN, *supra* note 4, at 11 and 33-50. In general this author thinks a more aggressive arrest, prosecution and sentencing have positive recidivism and revictimization effects, but still he express the concern. See also, SMITH, *supra* note 4, at 10: similar analysis.

⁸³ See, for instance: KLEIN, *supra* note 4, at 39. Even though, this author cares about victim's desires, he thinks prosecutors "should not allow victim opposition to automatically stop them from prosecuting cases. If prosecutors find that the overwhelming majority of victims consistently oppose prosecution, they should examine both their and law enforcement's interaction with victims to increase support of prosecution from victims that is more in line with that found across the rest of the country."

⁸⁴ SMITH, *supra* note 48, at 79: "The defense attorneys have a point in that federal and state money seems to be available to train judges to be sympathetic to prosecution arguments but not to train them in the defense perspective on these cases (viz, that not all domestic violence cases involve efforts at control by a primary aggressor but are "fights" that result from interpersonal conflict between two people with different points of view)." See also generally: JEANNIE SUK, *AT HOME IN THE LAW* (2009).

⁸⁵ See S. REP. 102-197, S. Rep. No. 197, 102ND Cong., 1ST Sess. 1991, SEC 521 (a), in *supra* note 26.

⁸⁶ See generally Umud Dalgic, *Pressures of Americanization on Economic Policy Making: Foreign Educated Technocrats and Free Market Reforms in Turkey, Chile, and S. Korea*, Northwestern University, Sociology ABD, MP5A, 2009, Chicago, available at http://www.allacademic.com/meta/p_mla_apo_research_citation/3/6/3/2/0/pages363208/p363208-1.php; and Beth A. Simmons, Frank Dobbin, and Geoffrey Garrett, *Introduction: The International Diffusion of Liberalism*, INTERNATIONAL ORGANIZATION 60, 2006, No. 4: pp. 781-810; and Y. DEZALAY, AND BRYANT G. GARTH, *THE INTERNATIONALIZATION OF PALACE WAR*, Chicago, University of Chicago Press (2002) p. 112.

⁸⁷ I am working in this topic for my JSD dissertation, which is related with prevention of further DV events in families who are already in the judicial system. In my preliminary work, I assert that because of certain policy diffusion process, the economic structure (particularly in welfare and labor organization) in Chile has become

criminal prosecution is a phenomenon universally experienced⁸⁸. Thus, for assessing what the US is doing, it would be interesting to briefly analyze what a developing country such as Chile is doing to address the same problems that researchers in the 1980s and 1990s, as well as VAWA 1994, detected in the US.

First of all, as many other countries, Chile is experiencing a legal reform to confront its high rates of DV. In 1994, Chile passed its first Domestic Violence Statute (Ley 19325). In the paper, this piece of legislation had many similarities with the introduced in the US both in the legal language and in the structure of the basic tools against DV improved or created by the VAWA 1994. For instance, the Chilean Act defined who were deemed as family members and intimate partners for this statute purposes (and later many other Family Law purposes) in a very similar manner than the American VAWA and introduced, as the US did, several anti-DV mechanisms such as the restraining orders and the offender's and victim's therapies. The Act 19325 also changed some criminal justifications (for example, marital rape and forgiveness of the victim), and differentiated between misdemeanor offenses (including psychological maltreatment) and criminal offenses, as VAWA and others federal and states acts did in the US.

However, both legislations had, and still have, a fundamental difference: the Chilean Act did not introduce the DV problem as part of a *gender based problem*. In fact, the name of the statute is literally *Intra Familiar Violence Act* because some Senators, in an attitude that later showed symptomatic, were reluctant to see this problem as something more related with the household (Domestic) and gender rather than a Family –and so, supposedly “more important”– issue.⁸⁹

The problem still remains. In fact, when the Reform to the Act 19325 (the Act 20066) was presented, in the First Report of the Family Commission to the Congress, the Commission did not only acknowledge about the significant funding and organizational problems that the first DV Statute confronts to be implemented⁹⁰, but also about potential biases in the prosecution

increasingly similar to the US system. Then, because of a process of cultural and economic transference, there are family phenomena (and Family Law) that are likely to be replied in Chile with some years of distance.

⁸⁸ The United Nations High Commissioner for Human Rights Louise Arbour, on the occasion of the International Day for the Elimination of Violence against Women in 2007 said: “[I]mpunity is built on a foundation of discrimination and inequality. States have largely accepted the international human rights framework in place to prevent, condemn and punish discrimination against women. But unless these inequalities are addressed, including in the economic and social spheres, the violence will persist.” LOUISE ARBOUR, *Real Equality And End To Impunity Needed To Stop Violence Against Women*, Statement on the occasion of the International Day for the Elimination of Violence against Women, Nov. 25th, 2007, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=3971&LangID=E>.

⁸⁹ About this, the UNICEF consultant Soledad Larraín has said: “Even though the Act N° 20066 of 2005 improved some aspects [...] of the Act of 1994 [...], its name is still ‘Intra Familiar Violence Act.’ Then, a gender consideration is not present there. The Act penalizes the intimate partner violence without any consideration of who the aggressor is. This implies that the relationship of power, which is the essence of the gender based violence, is absent of our Law.” Soledad Larraín, interviewed by Pilar Pezoa Navarro, *La Violencia Contra la Mujer No es Normal [The Violence Against Women is Not Normal]*, in *GENDER AND EQUITY OBSERVER*, Nov. 16, 2010, *Online Magazine*, available in Spanish at http://www.observatoriogeneroyliderazgo.cl/index.php?option=com_content&task=view&id=3488&Itemid=105#larrain: “Aunque la ley N° 20.066 del año 2005 mejoró algunos aspectos [...] de la ley del año 1994 [...], la ley continúa llamándose de ‘violencia intrafamiliar’, en donde el concepto de violencia de género no tiene cabida. La ley sanciona indistintamente la violencia en la pareja, independientemente de quien sea el agresor. Eso implica que la relación de poder que es la esencia de la violencia de género está ausente de la legislación.”

⁹⁰ See MOCIÓN PARLAMENTARIA LEY 20.066 [PARLAMENT MOTION ACT 20066], in *HISTORIA DE LA LEY No. 20.066 [HISTORY OF THE ACT No. 20066]*, Official Report, National Congress Library, Chile, Valparaíso, 2005, p. 5-6, available in Spanish at <http://www.bcn.cl/histley/ periodos?p=2005>. See also LARRAÍN,

decisionmaking process⁹¹. Nevertheless, beyond this worry, the Reform did not confront the problem enough as the US did in the VAWA and its reforms. We do neither have funds for Programs such as STOP, “no-drop” mandated policy, nor any single mention to “mandatory arrests”⁹² or “prohibition of dual arrests”, the Family Courts still are in charge of no-criminal DV cases without a general docket separation,⁹³ etc.

I think this neutral gender incorporation of the legal reproach against DV is the cause of a lack of assess of biases against victims in the decisionmaking process in Chile⁹⁴.

A. The Bias Problem in Chile Compared with The United States.

The advances and problems that Chile has experienced, regarding biases and leniency in the prosecution of DV crimes, have been reported by the Inter-American Commission on Human Rights (IACHR) of the Organization of American States⁹⁵. I grouped them in four topics to compare with the US situation.

supra: Larraín thinks the organizational and funds problems of the Act 19325 were not sufficiently assessed in the discussion of the Act 20066.

⁹¹ Carolina Merino L. and Nelly Santander M. (from the Corporation for Integral Family Development) intervention in the FIRST REPORT OF THE FAMILY COMMISSION, in HISTORIA DE LA LEY No. 20.066 [HISTORY OF THE ACT No. 20066] *supra*, at 63: “[W]e should have a training program for the members of the system who are in charge of enforcing the law to allow a better understanding of the problem. The domestic violence is spread and validated when the society has stereotypes, biases and preconceived ideas about its reasons, consequences and justifications, perpetuating the situation. The actors of the system in charge of the application and interpretation of the law will replicate these biases and their personal and subjective ideas if they do not have an adequate training. Moreover, they can lose the impartiality and professionalism that the issue requires to be treated.” (“[D]ebería existir un programa de capacitación orientado hacia los funcionarios encargados de aplicar la ley para una mejor comprensión del problema, pues la violencia intrafamiliar se reproduce y valida dentro de una sociedad con estereotipos, prejuicios e ideas preconcebidas sobre sus razones, consecuencias y justificaciones, que por regla general perpetúan la situación. Los agentes encargados de la aplicación e interpretación de la ley, si no cuentan con una preparación adecuada, replicarán estos prejuicios e ideas personales y subjetivas sobre la situación que se les presenta, perdiendo la imparcialidad y profesionalismo que el tratamiento del tema requiere.”)

⁹² In the proposal of the Act there were concerns about increasing more aggressive methods against DV offenders, but they finally did not become rule. For instance, one section that finally did not become rule said: “The police should help, protect and transport the intra familiar violence victims, take the reports without a medical certify, enter to the home and arrest the aggressor [without a warrant] in case of flagrant maltreatment.” PARLAMENT MOTION ACT 20066, *supra* note 78, at 14. (“Las policías deberán prestar auxilio, protección y transporte a las víctimas de violencia intrafamiliar; tomar las denuncias, sin necesidad de exigir certificado médico a la víctima; ingresar al hogar en caso de maltrato flagrante; y detener al agresor en caso de maltrato flagrante.”)

⁹³ In fact, when the Act 19325 incorporated DV into our legislation, since there were not Family Courts the Act disposed that not-criminal DV cases were sentenced by Civil Courts without attorneys’ intervention.

⁹⁴ See Kristin Bumiller, *The Nexus of Domestic Violence Reform and Social Science: From Instrument of Social Change to Institutionalized Surveillance*, Departments of Political Science and Women’s and Gender Studies, Amherst College, Amherst, Massachussets, Annu. Rev. Law. Soc. Sci. 2010, 6:173-193. available at www.annualreviews.org. Bumiller thinks that the treatment of IPV in a gender neutral manner has caused a lack of inadequate preventive and retributive response to DV. In fact, she thinks the term “Intimate Partner Violence” is gender neutral. If so, the term “Intrafamiliar Violence” is even more neutral, bringing Chile to an absolute incorrect treatment of a issue that is really gendered, not only in the rates of prevalence but also in its causes (patriarchal views of the human relationships).

⁹⁵ See IACHR, *supra* note 41.

First, even though in the last decade there was an increase of 8-10% of report of DV complaints, only a 5.9% (14,149) were formally investigated in 2004, and 92% of the cases were “closed after the first hearing.”⁹⁶ Regarding general sexual related offenses, only a 3.8% went to trial in 2002⁹⁷. While, according to Erica Smith *et al* in the US approximately an 89% of reported domestic violence sexual assault and a 66% of the domestic aggravated assault were prosecuted⁹⁸.

Second, the National Prosecutor Office applies excessively the “opportunity principle” which allows prosecutors to drop the cases when they think there are not merits for continuing with investigation⁹⁹. Contrary to what US prosecutors do according with Barbara E. Smith *et al*,¹⁰⁰ Chilean prosecutors do not look for factors to increase the likelihood of a win. What they actually look for, according to Lidia Casas Becerra, are factors of win “certainty.”¹⁰¹

Third, contrary to the US measurements of improvement on sentencing –summarized in the Response of the Government of the United States of America to the Inter-American Commission on Human Rights Regarding the Jessica Gonzales’ Petition to the IACHR–,¹⁰² in Chile there is not statistics specifically targeted to the topic. At least, there have been qualitative analyses of the problem. For instance, the interpretation of evidence by judges “in cases involving violence against women” can be biased, according to certain not conclusive research reported by the IACHR¹⁰³. This is concordant with findings that say prosecutors and judges put more consideration in the society’s than victim’s safety to award protective orders and pretrial

⁹⁶ *Id.* at 6, *citing*: CHILE’S REPLY TO THE IACHR’S QUESTIONNAIRE ON THE SITUATION OF WOMEN’S ACCESS TO JUSTICE IN THE AMERICAS 6-7 (Nov. 18, 2005).

⁹⁷ *Id.* at 8, *citing* LIDIA CASAS-BECERRA AND ALEJANDRA MERA GONZÁLEZ-BALLESTEROS, DELITOS SEXUALES Y LESIONES. LA VIOLENCIA DE GÉNERO EN LA REFORMA PROCESAL PENAL EN CHILE: INFORME FINAL [SEX OFFENSES AND SEXUAL ASSAULT AND BATTERY. GENDER-BASED VIOLENCE IN CRIMINAL PROCEDURE REFORM IN CHILE: FINAL REPORT], Nov. 2004, research done under the project “Gender and Criminal Procedure Reform” being conducted by the Justice Studies Center of the Americas.

⁹⁸ SMITH, *supra* note 31, at 2.

⁹⁹ IACHR, *supra* note 41, at 56.

¹⁰⁰ *See supra* notes 63 & 64.

¹⁰¹ IACHR, *supra* note 41, at 57, *quoting* CASAS BECERRA, *supra* note 90.

¹⁰² Response of the Government of the United States of America to the Inter-American Commission on Human Rights Regarding Jessica Gonzales’ Petition # P-1490-05, 2006, p. 13: “Among the 1500 felony assault cases, the probability of the case leading to conviction (felony or misdemeanor) was greater for family assault defendants (71%) than nonfamily assault defendants (61%). Regarding federal prosecution of domestic violence, federal courts convicted 90% of defendants adjudicated for an interstate domestic violence offense. Of 47 Federal defendants sentenced for an interstate domestic violence offense between 2000 and 2002, 91% received a prison term with a median length of 60 months. Of the nearly 500,000 men and women in State prisons for a violent crime in 1997, 15% were there for a violent crime against a family member. Additionally, convicted family violence offenders made up about 22% of the nearly 86,500 convicted violent offenders in local jails in 2002. Most (60%) of these approximately 18,700 jail inmates incarcerated for family violence were in jail for an aggravated assault.”

¹⁰³ IACHR, *supra* note 41, at 64, *citing* THEMATIC HEARING, HEARING ON THE SITUATION OF WOMEN AND THE ADMINISTRATION OF JUSTICE IN THE REGION, IACHR, 121st. Regular Session, organized by the Center for Reproductive Rights (CRR) and the Center for Justice and International Law (CEJIL), Oct. 21th, 2004; LUZ RIOSECO ORTEGA, BUENAS PRÁCTICAS PARA LA ERRADICACIÓN DE LA VIOLENCIA DOMÉSTICA EN LA REGIÓN DE AMÉRICA LATINA Y EL CARIBE [BEST PRACTICES FOR ERADICATING DOMESTIC VIOLENCE IN LATIN AMERICA AND THE CARIBBEAN], Economic Commission for Latin America and the Caribbean, Santiago de Chile, Sept. 2005; FARITH SIMON AND LIDIA CASAS-BECERRA, EVALUACIÓN DE LA REFORMA PROCESAL PENAL DESDE UNA PERSPECTIVA DE GÉNERO [EVALUATING CRIMINAL PROCEDURE REFORM FROM A GENDER PERSPECTIVE], Justice Studies Center of the Americas (CEJA), Nov. 2004; and CASAS-BECERRA *supra* note 90.

detention¹⁰⁴. In addition, the IACHR has detected that “some judges are reluctant to apply and interpret international human rights treaties as part of domestic law, particularly those that apply to women’s cases.”¹⁰⁵

Finally, among other policies that can educate toward a higher or lower aggressiveness in the criminal fight against DV, Chile incorporated the following: training programs and plans for “institutional personnel, including, among others, the Chilean national police and educators;”¹⁰⁶ some mechanisms of mediation during the process;¹⁰⁷ some “precautionary measures when the victims are pregnant, suffer from some disability or another risk factor”¹⁰⁸; some *prevention* national programs;¹⁰⁹ the creation of a Women and Family Commission in the Uniformed Police;¹¹⁰ and “a number of projects in progress for intersectoral coordination, among them the Inter-ministerial Commission to Prevent Intra Family Violence.”¹¹¹ As we saw, the VAWA in the US incorporated specific education policies that have been recognized successful by the IACHR, including the training of 1,100 judges since 2000¹¹².

B. The Future Possibilities for Leniency Analysis in Chile.

If we look for solutions to address these four areas of leniency problems, we need first to mention attempts by some system actors to change. Then, we will briefly assess if statistics analyses are possible in Chile to make those attempts more serious and effective.

On the one hand, we have certain efforts made by the National Prosecutor’s and Defendant’s Offices, as well as the Judiciary. We do not mention here the police since it does not have the autonomy to promote policies that Prosecutors and Defendants do have. Both offices, we need to notice, and the police departments are part of the executive branch, but constitutionally the former have certain grade of autonomy, while the polices are controlled by the Defense and Interior Department.

Even though the IACHR criticism, in Chile both the National Defendant’s Office and the National Prosecutor’s Office have tried to improve their response toward DV victims, shaping somehow the decisionmaking in the process as the US actors of the system do.¹¹³ For example,

¹⁰⁴ *Id.*, at 71, citing CASAS BECERRA *supra* note 90.

¹⁰⁵ *Id.*, at 93, citing VALERIA PANDJIARJIAN AND DENISE HIRAO, BALANCE SOBRE LA SITUACIÓN DE LA VIOLENCIA DOMÉSTICA EN LA SUBREGIÓN BRASIL Y CONO SUR, ARGENTINA, BRASIL, CHILE, PARAGUAY Y URUGUAY [REPORT ON THE SITUATION OF DOMESTIC VIOLENCE IN BRAZIL AND THE SOUTHERN CONE, ARGENTINA, BRAZIL, CHILE, PARAGUAY AND URUGUAY], CLADEM, prepared with support from UNIFEM, São Paulo, June 2004, [Secretariat’s translation],

¹⁰⁶ *Id.* at 102.

¹⁰⁷ *Id.* at 106.

¹⁰⁸ *Id.* at 108.

¹⁰⁹ *Id.* at 109: “such as the National Program and Plan for the Prevention of Intrafamily Violence and the Nacional Plan for Intrafamily Violence Intervention for the 2001-2006 period, which proposes work in six areas: legislation; communications; promotion and prevention; basic and advanced training; treatment or public services, and research.”

¹¹⁰ *Id.* at 111.

¹¹¹ *Id.* at 114.

¹¹² *Id.* at 101.

¹¹³ See generally the following **National Defendant’s Office** studies: ESTUDIOS Y CAPACITACIÓN: EVALUACIÓN DE LAS CONCEPCIONES DE GÉNERO DE LOS/AS DEFENSORES/AS PENALES PÚBLICOS [STUDIES AND TRAINING: EVALUATION OF THE GENDER CONCEPTS IN THE PUBLIC

the National Prosecutor's Office ordered to prosecutors to appeal when the judge does not accept the charge of the crime as one of domestic violence (which has a higher punishment). Nevertheless, this order only included *regular* crimes committed against DV victims. Thus, when the judge does not accept charges for the new crime of "*habitual violence*" –which involves a series of misdemeanors or psychological non-criminal DV offenses¹¹⁴– there is not an order of insistence.

The Judiciary, also criticized by the IACHR, disposed recently that protection measures of the country capital, including protection orders,¹¹⁵ should be managed by a Center of Control, Evaluation and Resolution of Protection Orders¹¹⁶. There are not generalized plans from the Judiciary itself to educate judges in the topic or orders to address DV more "seriously."

On the other hand, I believe Chile can perform future studies to assess with more effectiveness the detection of biases in DV decisionmaking. In this sense, the National Defendant's and Prosecutor's Offices have sufficient data¹¹⁷. However, until now they only have

DEFENDANTS], Centro de Documentación Defensoría Penal Pública [Center of Documentation, National Defendant's Office], Santiago de Chile, Oct. 2009. *Also*, ESTUDIOS Y CAPACITACIÓN: LA DEFENSA DE CASOS DE VIOLENCIA INTRAFAMILIAR [STUDIES AND TRAINING: THE DEFENSE IN DOMESTIC VIOLENCE CASES], Unidad de Comunicaciones y Prensa, Departamento de Estudios Defensoría Nacional, Defensoría Penal Pública [Communications and Media Department, Studies Department, National Defendant's Office], Santiago de Chile, without year. *Also*, LA PERSPECTIVA DE GÉNERO EN LA DEFENSA DE MUJERES EN EL NUEVO SISTEMA PROCESAL PENAL CHILENO: UN ESTUDIO EXPLORATORIO [GENDER PERSPECTIVE IN WOMEN'S DEFENSE IN THE NEW CHILEAN CRIMINAL PROCEDURE SYSTEM: AN EXPLORATORY STUDY], Final Results Report, Defensoría Penal Pública / Facultad De Derecho Universidad Diego Portales [National Defendant's Office / Diego Portales University School of Law], Santiago de Chile, December of 2004. *Also*, Alex Van Weezel, *La Sistemática de los Delitos de Lesiones en el Código Penal y el Régimen Introducido por la Ley N° 20.066 Sobre Violencia Intrafamiliar (The Assault Crime System in Domestic Violence in the Criminal Code and in the Statute 20.066 of Domestic Violence)*, National Defendant's Office, Santiago de Chile, without year. All of these reports are available in Spanish at <http://www.defensoriapenal.cl/estandares/genero.php>.

See also generally, the following National Prosecutor's Office documents: OFICIO NO. 111/2010 INSTRUCCIÓN GENERAL QUE IMPARTE CRITERIOS DE ACTUACIÓN EN DELITOS DE VIOLENCIA INTRAFAMILIAR [OFFICIAL NOTE NO. 111/2010 GENERAL INSTRUCTIONS ABOUT ACTING CRITERIA IN DOMESTIC VIOLENCE CRIMES], Ministerio Público, Fiscalía Nacional [National Prosecutor's Office], Santiago, 2010, available in Spanish at <http://www.fiscaliadechile.cl/RepositorioMinpu/Archivos/minpu/documentos/oficios/2010/OF%20FN%20111-2010%20INSTRUCCION%20GENERAL%20QUE%20IMPARTE%20CRITERIOS%20DE%20ACTUACION%20EN%20DELITOS%20DE%20VIOLENCIA%20INTRAFAMILIAR.pdf>; OFICIO NO. 160/2009 INSTRUCCIÓN GENERAL QUE IMPARTE CRITERIOS DE ACTUACION EN DELITOS SEXUALES [OFFICIAL NOTE NO. 160/2009 GENERAL INSTRUCTION ABOUT ACTING CRITERIA IN SEXUAL OFFENSES], Ministerio Público, Fiscalía Nacional [National Prosecutor's Office], Santiago, 2009, available in Spanish at <http://www.fiscaliadechile.cl/RepositorioMinpu/Archivos/minpu/documentos/oficios/2009/OF%20FN%20160-2009%20INSTRUCCION%20GENERAL%20QUE%20IMPARTE%20CRITERIOS%20DE%20ACTUACION%20EN%20DELITOS%20SEXUALES.pdf>

¹¹⁴ OFICIO NO. 111/2010, *supra*.

¹¹⁵ Which are only temporal in Chile.

¹¹⁶ *See* ACTA N° 135-2010 CORTE SUPREMA [AGREEMENT No. 135-2010, SUPREME COURT] AUTO ACORDADO DEL CENTRO DE MEDIDAS CAUTELARES DE LOS CUATRO TRIBUNALES DE FAMILIA DE SANTIAGO [OFFICIAL NOTE: CREATION OF THE PROTECTION MESEAUERS CENTER FOR THE FOUR FAMILY COURTS OF SANTIAGO], available in Spanish at <http://justiciadefamilia.blogspot.com/2010/09/autoacordado-del-centro-de-medidas.html>.

¹¹⁷ *See* INFORME ESTADÍSTICO ANUAL PERÍODO 2009 [ANNUAL STATISTICAL REPORT TERM 2009], Defensoría Penal Pública [National Criminal Defendant's Office], Santiago de Chile, 2010, available in Spanish at <http://www.defensoriapenal.cl/Documentos/estadisticas/2009/informe-anual-2009.pdf>. *Also*, ANEXO INFORME

shown rates about the number of cases they receive, how many are going to be solved by the Judiciary,¹¹⁸ and how many they are finishing. They do not have rates that show the difference in *how* the Defendants' and Prosecutors' Offices are finishing the cases. Then, an open question is: do Prosecutors' Offices close the DV cases before sentencing more easily than non-DV cases, as the IACHR claims? The good news is both offices incorporated marks on the files to separate DV and non-DV cases,¹¹⁹ and that from 10 years ago we have an Oral Criminal Procedure in which all of the dockets are electronic, connected with a national net. Thus, in the future is not impossible to conduct studies to assess biases in the criminal procedure decisionmaking.

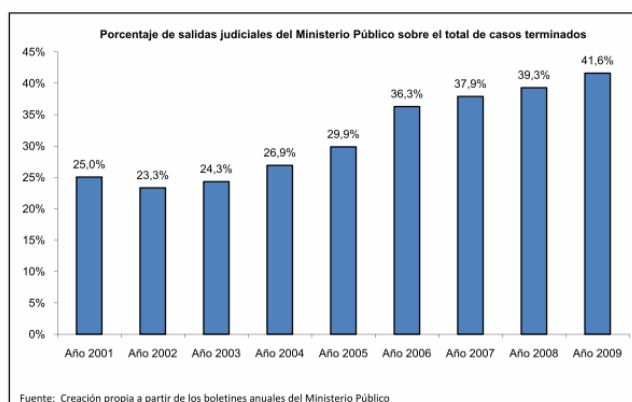
Finally, the Judiciary does not have a separate statistic about the difference in outcomes. But, it also separates the cases by kind and has the sources to make such a comparison, including free access to the Appellate Courts and Supreme Courts sentences. Furthermore, services like the provided by Lexis Nexis and WestLaw are increasing in Chile.

In brief, despite of the fact that legal tools and statistics are not enough to assess and work in the problem of biases in DV decisionmaking in Chile as hardly as the US is doing, the concern is at least present and probably future research and work in the topic will success.

CONCLUSION

ESTADISTICO ANUAL CAUSAS POR VIOLENCIA INTRAFAMILIAR [ANNEX: ANNUAL STATISTIC REPORT IN DOMESTIC VIOLENCE CASES], Defensoría Penal Pública [National Criminal Defendant's Office], Santiago de Chile, 2010, available in Spanish at <http://www.defensoriapenal.cl/Documentos/estadisticas/2009/ANEXOINFORMECAUSASPORVIOLENCIAINTRAFAMILIAR.pdf>. Also, BOLETÍN ESTADÍSTICO AÑO 2009 [STATISTICAL REPORT, 2009], National Prosecutor's Office, Santiago de Chile, 2010, available in Spanish at http://www.fiscaliadechile.cl/RepositorioMinpu/Archivos/minpu/documentos/estadisticas/Boletin_Estadistico_Anuar_2009.pdf.

¹¹⁸ For instance, INFORME ESTADÍSTICO ANUAL PERÍODO 2009 [ANNUAL STATISTICAL REPORT TERM 2009], Defensoría Penal Pública [National Criminal Defendant's Office], *supra* at 5, shows how the Prosecutor's Offices are increasingly bringing cases to judiciary decisionmaking:



¹¹⁹ ANEXO INFORME ESTADÍSTICO ANUAL CAUSAS POR VIOLENCIA INTRAFAMILIAR [ANNEX: ANNUAL STATISTIC REPORT IN DOMESTIC VIOLENCE CASES], Defensoría Penal Pública [National Criminal Defendant's Office], *supra* note 112, at 1-2. In this report, the national Defendant's Office indicates that the DV cases oscillate between the 13.2 and 9.9% in 2009. In addition, it says that a 38.6% of the assaults, 27.9% of the crimes against freedom e intimacy (including sexual assault, which unfortunately is not detailed), and 5.1 of the homicide were DV crimes.

Connecting the three parts of my essay, I can make three conclusions:

First, studies demonstrate that in the past there was a remarkable difference in attitudes of all criminal system actors toward DV crimes, comparing with other similar crimes, in the US. This difference produced different outcomes in all of procedural levels of prosecution of DV crimes. Because of that, the US promoted legal reforms toward more mandatory actions in the decisionmaking in all the stages of criminal prosecution. This reform is a global tendency. An example of that is the Chilean situation, where the statistic studies about the topic are still in basic stages.

Second, apparently the mentioned difference has been overcome because of a change in policies in all levels of criminal DV treatment. Studies have said that currently there is an improvement of rates in the “severity” or “seriousness” in the actors of the criminal system’s decisions. However, there are remaining differences.

Finally, these differences should be explained. The current studies in the topic have two opposite explanations for this: the actors of the system are opting for more preventive approaches –beyond their effectiveness¹²⁰, there are still biases against victims in the criminal prosecution. The topic is still in discussion, but I would say biases should not be discarded as an explanation for the current status of decisionmaking in DV.

¹²⁰ A question not covered by this essay.